

January 29, 1998

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION.**

**SUBJECT:** Department of Development and Environmental Services File No. **L97P0019**

**ARCADIA**  
Preliminary Plat Application

**Location:** West of 42nd Avenue South at proposed South 292nd Street

**Applicant:** Brooks Powell  
Powell Home Builders  
P.O. Box 98309  
Des Moines, WA 98198

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions
Examiner:	Approve, subject to conditions

**PRELIMINARY MATTERS:**

Application or petition submitted:	May 12, 1997
Notice of complete application:	June 9, 1997

**EXAMINER PROCEEDINGS:**

Hearing Opened:	January 20, 1998
Hearing Closed:	January 20, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**ISSUES ADDRESSED:**

- Sidewalks/walkways
- Drainage

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS:

1. **General Information:**

Owner/Developer:	Powell Home Builders Brooks Powell, Vice President P.O. Box 98309 Des Moines, WA 98198
Engineer:	Harold M. Duncanson, P.E. Duncanson Company 14212 Ambaum Boulevard SW #301 Seattle, WA 98166
Location:	West of 42nd Avenue South at proposed South 292nd Street
STR:	SE, NW, Sec 3, Twn 21N R4E
Zoning:	R6
Acreage:	4.99 acres
Number of Lots:	23
Density:	4.6 units per acre
Typical Lot Size:	5,670 to 8,730 square feet
Proposed Use:	Single-family detached homes
Sewage Disposal:	Lakehaven Utility District
Water Supply:	Lakehaven Utility District
Fire District:	Federal Way
School District:	Federal Way
Complete Application Date:	June 9, 1997

2. **Proposal.** Powell Home Builders, represented by Harold M. Duncanson, P.E. (the “Applicant”) proposes to subdivide a 4.99-acre infill parcel into 23 single-family residential building lots. With proposed lot sizes ranging from 5,670 to 8,730 square feet, the proposed density is 4.6 units per acre, well within the density standards established by the R6 zoning classification within which the subject property is located.
3. **SEPA.** An Environmental Impact Statement is not required. On December 2, 1997, the Department of Development and Environmental Services (hereinafter, the “Department”, or “DDES”) issued a threshold determination of non-significance (DNS), a public declaration that the proposal is considered not to cause probable significant adverse impacts on the environment. No person, agency or tribe appealed that determination. See Exhibit No. 5.
4. **Department Recommendation.** The Department recommends granting preliminary approval to the proposed plat of Arcadia, subject to the 14 conditions of final plat approval which are stated on pages 9 through 13 of the Department’s Preliminary Report to the Hearing Examiner dated March 20, 1997 (Exhibit No. 2).

5. **Applicant Response.** The Applicant accepts the Department's recommendation as described in Finding No. 4, preceding; EXCEPT that the Applicant opposes the Department's recommendation to require sidewalk improvements extending northward and southward from the north and south property boundaries to the nearest street intersections. This contested condition is discussed further in Finding No. 5, following.
6. **Sidewalk Extensions.** Recommended Condition No. 9b requires the following:

The following conditions outline the required road improvements for this subdivision. All improvements are to be constructed in compliance with the 1993 King County Road Standards (KCRS).

- a. ...
- b. The sidewalk along the west side of 42nd Avenue South shall continue to the north to include a wheelchair ramp at South 291st Street and to the south to include a wheelchair ramp at South 293rd Street.

The Applicant opposes this recommended condition, arguing that it will not improve overall pedestrian safety; that the other plats in the neighborhood do not have frontage sidewalk extensions; that the County is not installing sidewalks in this area to remedy the shortcomings of plats approved in the past without frontage sidewalks; and, that the recommended sidewalk improvements would cause the relocation of neighbor fences and require rockery installation to stabilize necessary slope cuts.

While conceding that the surrounding neighborhood generally does not have sidewalks, the Department emphasizes that 42nd Avenue South is a *neighborhood collector* street and that, therefore, sidewalks are important (more important, for instance, than for a *minor access* local street). The Department argues further that extending sidewalks in this manner is commonly required when, such as in this case, new standards have been adopted which are higher than the standards which apply to the older neighboring plats. The sidewalk improvement recommended by the Department is consistent with the *neighborhood subcollector* street standard contained in the KCRS. Further, the Department notes that KCRS Section 3.02.A.4 states:

On minor access streets (residential) exceeding 150 feet and on any cul-de-sacs with off-street walkways extending from their termini to other streets, parks, schools, bus stops, or other pedestrian traffic generators, one side. On cul-de-sacs, sidewalks shall extend around bulb to intersect off agency walkway. *Other extended off-street walkways may be required by the reviewing agency to provide direct connections for ease and safety of pedestrians.*

The Applicant argues that the Department's recommendation will require that neighboring lawn be torn up and that a neighboring fence be moved several feet. The Department responds that these neighbors are using publicly owned right-of-way. The Department further responds that it would make no sense to install a frontage sidewalk to KCRS standard which simply stubs into a neighbor's chain link fence.

7. **Drainage.** The drainage solution for this proposed plat is not opposed by any person or party. However, it does require a drainage variance (which has been approved by the Surface Water Management Division). The property contains three very small depressions. The approved drainage concept plan built permit continued infiltration of the same quantity of water previously infiltrated via those three depressions. However, the capacity of those three depressions will be consolidated into one drainage facility.
8. Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated January 20, 1998 are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the examiner's report which are submitted to the King County Council.

#### CONCLUSIONS:

1. The Department has correctly interpreted and applied the KCRS regarding sidewalk frontage and offsite frontage construction. In addition, the Department's recommendation is consistent with Court rulings in this area of concern. These rulings, through the past decade or so, require that the condition be related to the proposed land use action and that the condition be generally proportionate to the impact expected from the proposed development. In this case, although the entire neighborhood will benefit from having a complete block of streetside sidewalk, no homeowners will benefit more than the subject property homeowners and, more particularly, their children, who will ingress/egress from the proposed plat via the required sidewalk extensions.
2. The slope which requires some cut to accommodate sidewalk development is a minor/shallow slope. Stabilization should be relatively easy. See Exhibit No. 14. Further, the recommended sidewalk extension will not be onerous or burdensome. It is reasonably related to the proposed subdivision development and to the scale/density of that development. Finally, it is consistent with KCRS standards. For all of these reasons, the sidewalk extension should be required as recommended by the Department.
3. Based upon the whole record, and according substantial weight to the determination of environmental significance made by the Land Use Services Division, it is concluded that approval of this subdivision as set forth below would not constitute a major action significantly affecting the quality of the environment. All evidence of environmental impact relating to the proposed action and reasonable alternatives to the proposed action have been included in the review and consideration of this action.
4. If approved subject to the conditions set forth below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Federal Way Community Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
5. If approved subject to the conditions set forth below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for drainage ways, streets, other public ways, water supply, and sanitary wastes; and it will serve the public use and interest.
6. The conditions set forth in the Department's Preliminary Report as amended below are in the public interest and are reasonable requirements.

## DECISION:

The proposed plat of ARCADIA is GRANTED PRELIMINARY APPROVAL, subject to the conditions recommended in the Department's Preliminary Report and Decision as set forth here. The proposed plat of ARCADIA is described in Exhibit No. 7, received by the Department of Development and Environmental Services on May 12, 1997.

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density (and minimum density) requirements of the R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04, except as provided with the King County Surface Water Design Manual Variance File No. L97V0095, and any future variances. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the drainage requirements and shall apply to all plat approvals.
  - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
  - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings #\_\_\_\_\_ on file with DDES and/or the Department of Transportation. This plan shall be submitted with the application for any building permit. All connections of the

drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration or dispersion, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

8. The following conditions outline several Core and Special Requirements in the 1990 SWM Drainage Manual which are particularly important for the design of this project. All other applicable requirements in the SWM Manual shall also be addressed in the design of site improvement plans.
  - a. Core Requirement No. 1 – Storm water shall be discharged at the natural location. The applicant proposes to infiltrate all runoff on-site to the greater of the 100-year 24-hour and the 100-year 7-day storm events. The applicant has received conditional approval for the requested variance regarding diversion of surface water flows for the emergency overflow route (See File No. L97V0095).
  - b. Core Requirement No. 3 – Runoff Control. On-site infiltration must be provided as required under the conditions of Variance File No. L97V0095. Biofiltration of storm water is also required for water quality enhancement. The size of the proposed drainage tracts may have to increase to accommodate the required infiltration retention storage volumes and biofiltration facilities.
  - c. Core Requirement No. 5 – Temporary Erosion and Sedimentation Control. In addition to the requirements stated in the Manual, the applicant shall take all necessary precautions to protect the infiltration basin from siltation during construction. The infiltration basin may not be used as a temporary erosion control pond.
  - d. Special Requirement No. 8 – Use of Closed Depressions for Peak Rate Runoff Control. Compliance with Special Requirement No. 8 is required for this subdivision. *Note:* The closed depressions appear to be fully contained on this site and are therefore exempt from the floodplain increase limitation.
9. The following conditions outline the required road improvements for this subdivision. All improvements are to be constructed in compliance with the 1993 King County Road Standards (KCRS).
  - a. The west half of 42nd Avenue South shall be improved to urban subcollector standards for the full frontage of the proposed plat. Improvements will include a widening to provide a 14-foot pavement width measured from the centerline with vertical curb and sidewalk. Grade will be compatible with the existing street at this location. The applicant's engineering plans shall address the requirements of KCRS 4.01F regarding street widening of existing roads.
  - b. The sidewalk along the west side of 42nd Avenue South shall continue to the north to include a wheel chair ramp at South 291st Street and to the south to include a wheel chair ramp at South 293rd Street.

- c. A minimum of 24 feet of additional right-of-way for 42nd Avenue South shall be dedicated along the east property line, allowing for a total of at least 24 feet of right-of-way from centerline.
  - d. South 292nd Street shall be improved as an urban subaccess street.
  - e. A planter island shall be provided within the “eyebrow” serving Lots 15 to 20 as required by KCRS 2.08A3.
  - f. The abutting lot owners shall maintain planter islands constructed within the cul-de-sacs. This shall be stated on the face of the final plat.
  - g. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administrative fee as determined by the applicable fee ordinance. The applicant has an option to either: 1) pay the MPS fee at final plat recording, or 2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application, and a note shall be placed on the face of the plat stating: “All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid”. If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
13. A fee-in-lieu of recreation space shall be paid by the applicant to King County. The amount of the fee shall be determined by King County Parks Division, consistent with the provisions of KCC 21A.14.185.
14. Prior to any clearing, demolition, or grading, the applicant shall provide the King County Office of Cultural Resources with the appropriate documentation of the historic features on site.

ORDERED this 29th day of January, 1998.

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R. S. Titus  
Deputy King County Hearing Examiner

TRANSMITTED this 29th day of January, 1998, to the parties and interested persons shown on the attached list.

### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before February 12, 1998**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before February 19, 1998**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

### MINUTES OF THE JANUARY 19, 1998 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L97P0019 – ARCADIA:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Gary Kohler, Richard Lowe, Harold Duncanson, and Margo Ritter.

The following exhibits were offered and entered into the record:

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|----------------|---|
| Exhibit No. 1  | Department of Development and Environmental Services File No. L97P0019  |
| Exhibit No. 2  | Department of Development and Environmental Services Preliminary Report to the Hearing Examiner for the January 20, 1998 public hearing   |
| Exhibit No. 3  | Application dated May 12, 1997  |
| Exhibit No. 4  | Environmental Checklist dated May 12, 1997  |
| Exhibit No. 5  | Declaration of Non-Significance dated December 2, 1997  |
| Exhibit No. 6  | Affidavit of Posting indicating December 17, 1997 as date of posting and December 23, 1997 as date affidavit was received by Department of Development and Environmental Services |
| Exhibit No. 7  | Preliminary plat dated May 12, 1997   |
| Exhibit No. 8  | Land Use Map 704W and 704E  |
| Exhibit No. 9  | Assessor Maps NE ¼ 3-21-4, NW ¼ 3-21  |
| Exhibit No. 10 | Geotechnical Study dated April 29, 1997   |
| Exhibit No. 11 | Preliminary Plat Stage Technical Information, May 22, 1997  |
| Exhibit No. 12 | Surface Water Design Manual Variance Approval, September 25, 1997   |
| Exhibit No. 13 | Conceptual Drainage Plan dated September 9, 1997  |
| Exhibit No. 14 | Photos offered by applicant showing properties affected by sidewalk construction  |

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Attachment  
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